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in kind, complainant appeals. Reversed and remanded, with directions.

John B. Minor, of Richmond, and *W. D. Carter*, of Fredericksburg, for appellant.

Alvin T. Embrey, of Fredericksburg, for appellees.

CHESAPEAKE & O. RY. CO. *v.* GAYLE.

June 15, 1922.

[112 S. E. 785.]

1. Railroads (§ 350 (7)*)—Giving Signals Held for Jury.—In an action for injuries to an automobile at a crossing, whether defendant's agents gave the statutory signals held, from the evidence, for the jury.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 143.]

2. Appeal and Error (§ 1170 (9)*)—Trial (§ 296 (3)*)—Instruction in Action for Collision at Crossing A. uding to Speed of Train as Negligent Held Not Reversible Error in View of Other Instructions and Statute.—In an action for injuries to an automobile, received at a crossing, an instruction which alluded to the rapid speed of the train as an act of negligence held not such error as to authorize a reversal in view of other instructions, and in view of Code 1919, §§ 6104, 6331, providing that error not affecting the substantial rights of the parties shall be ignored.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600.]

3. Negligence (§ 101*)—Automobile Driver's Contributory Negligence Mitigates Damages for Injuries at Railroad Crossing.—Under Code 1919, § 3959, where plaintiff's auto was damaged by defendant's train at a public highway crossing, the failure of defendant's agents to give the statutory signals required on approaching crossings entitles plaintiff to recover, though plaintiff was guilty of contributory negligence; such contributory negligence to be considered only in mitigation of damages.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 135.]

4. Evidence (§ 5 (2)*)—That Electric Automatic Devices Get Out of Order Is Matter of Common Knowledge.—It is a matter of common knowledge that electrically operated automatic devices get out of order at times and fail to operate.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 631.]

Error to Circuit Court of City of Williamsburg and County of James Ctty.

Action by *J. P. Gayle*, trading under the firm name of the *J. P. Gayle Supply Company*, against the *Chesapeake & Ohio Rail-*

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

way Company. Judgment for plaintiff, and defendant brings error. Affirmed.

Henry Taylor, Jr., of Richmond, and *Lett & Massie*, of Newport News; for plaintiff in error.

Henley, Hall, Hall & Peachy, of Williamsburg, for defendant in error.

BARKER v. COMMONWEALTH. (No. 71.)

June 20, 1922.

[112 S. E. 798.]

1. Indictment and Information (§ 121 (2)*)—Accused Entitled to Bill of Particulars Where Several Offenses Are Charged under Statutory Form of Indictment.—Under an indictment in the form authorized by section 7, Prohibition Act, accused is entitled to be informed specifically by bill of particulars for which of several offenses he is to be prosecuted.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 377.]

2. Indictment and Information (§§ 19, 121 (4)*)—Indictment in Statutory Form Not Required to Be More Definite than a Separate Count as Drawn Prior to Enactment; Prosecutor's Statement Held to Sufficiently Answer Motion for Bill of Particulars.—An indictment in the form authorized by section 7, Prohibition Act, is not required to be more specific than a separate count as drawn prior to the enactment, and motion for a bill of particulars is answered by prosecutor's statement that he would prosecute only under a count that was sufficient, independently of the statute.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 377.]

3. Indictment and Information (§ 87 (4)*)—Allegation of Particular Sale Held Not Necessary.—An indictment for violation of the prohibition act need not allege a sale to any particular person at any particular time if the time is within one year prior to indictment.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 26.]

Error to Circuit Court, Lee County.

Bill Barker was convicted of the illegal sale of ardent spirits, and he brings error. Affirmed.

Pennington & Pennington, of Pennington Gap, for plaintiff in error.

John R. Saunders, Atty. Gen., and *J. D. Hank, Jr., Asst. Atty. Gen.*, for the Commonwealth.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.